



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 12, 1992

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P.O. Drawer 537
Selma, Alabama 36702-0537

Dear Mr. Pitts:

This refers to the 1992 redistricting plan for city council districts for the City of Selma in Dallas County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on September 14, 1992; supplemental information was received on October 29, 1992.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Selma's population increased from 52.1 percent to 58.4 percent. There are eight members of the Selma city council elected from single-member districts, with a ninth councilmember, the council president, elected at large. Under the existing plan, blacks constitute a significant majority of the population in Districts 5, 6, 7, and 8 (83, 96, 98, and 93 percent black, respectively).

Despite the increase in the city's black population proportion, the proposed plan continues to concentrate black population in four districts at percentages that are 78, 95, 92, and 92 percent black while fragmenting black populations in other districts. In the context of the electoral history and the pattern of racially polarized voting in the City of Selma, it appears that this plan will limit black voters to an opportunity to elect no more than four members of council, as black voters repeatedly have been unable to elect candidates of their choice in citywide elections.

cc: Public File

Moreover, our review indicates that the extremely heavy concentration of blacks in each of Districts 5 through 8 is not necessary in order to assure that black voters will have an opportunity to elect their candidates of choice in these districts. While some of this overconcentration may be attributable to segregated residential patterns, it appears that there were other redistricting options available that satisfy the City's legitimate redistricting criteria without limiting unfairly the ability of black voters in the city as a whole to elect councilmembers.

In fact, during the redistricting process, an alternative plan, supported by the black community, that balanced the city's black population among the districts and created five in which black voters would be able to elect their chosen candidates was considered and rejected by the white councilmembers. While the Selma city council was not required to adopt a particular plan advocated by the black community, the city is required to show that the proposed plan was not adopted, at least in part, by a desire to deny or abridge the right to vote on account of race or color. In this regard, the reasons presented to us for rejecting this alternative plan appear to be pretextual, motivated by the desire to confine black population concentrations into a predetermined number of districts, and thus ensure a continuation of the current white majority on the council.

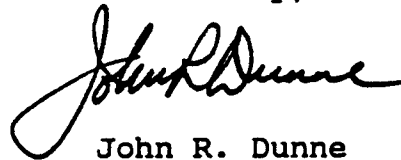
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Selma city council.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Selma plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of the redistricting plan is a matter before the court in Hines v. Smitherman, No. 92-0641-BH-M (S.D. Ala.), we are providing a copy of this letter to the court in that case.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable William Brevard Hand
U. S. District Judge